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77-1312/9

12 OCT 1977

MEMORANDUM FOR: Acting Deputy Director for Administration
Deputy Director for Intelligence
Deputy Director for Operations
Deputy Director for Science and Technology

FROM: John F. Blake
Acting Deputy Director of
Central Intelligence

SUBJECT: Relationships with Agency Contractors

1. Action Requested: It is requested that the attached statement of policy be promulgated to those personnel in your directorate who are involved in the procurement of supplies and services.

2. Background:

Several recent incidents have indicated a need for policy guidance on the subject. In these incidents, Central Intelligence Agency officers have been asked by contractor personnel to comment on whether items developed under Agency contracts could be sold to other contractors, to the public, or even to foreign governments. Agency personnel have been unclear as to whether they should answer at all, who should take action if an answer should be made, and what the possible contractual or legal implications of providing an answer might be.

A task force, which included representation from the Offices of the Inspector General, Logistics, Security, General Counsel, and the DD/S&T, reviewed the several problems which have occurred, and developed the basic ideas included in the attached statement of policy.

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SUBJECT: Relationships with Agency Contractors

3. Staff Position: Providing direction to Agency contractors who seek guidance on marketing and distribution of products developed under CIA contract is in the mutual best interest of both the Agency and its contractors. Agency personnel involved with procurement of supplies and services must be aware of this basic policy and understand who should take action on contractor requests.



John F. Blake

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Attachment

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STATEMENT OF POLICY
ON
RELATIONSHIPS WITH AGENCY CONTRACTORS

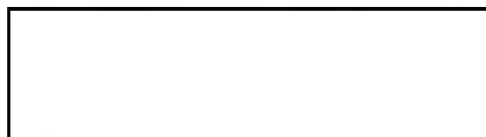
1. Industrial contracts are executed to procure a wide range of supplies and services necessary for accomplishment of our CIA mission. In addition to the normal profit which our contractors earn for performing a specific contract, they may also gain technical knowledge which can be used in development and sale of various product lines to other United States Government elements, to the United States private sector, or to foreign governments.

2. The development of new product lines based on technological fallout from our contracts, whether for sale domestically or to foreign governments, is generally considered a desirable consequence since the end result is an improved standard of living and maximum utilization of taxpayer dollars. Exceptions to this general rule occur when technology required for production of deliverable items or the deliverable items themselves are classified, sensitive or involve proprietary information. In such cases the Agency attempts to provide guidance in its written contracts, and questions from contractors which address such contractual matters are answered by the cognizant contracting officer after necessary coordination with technical, security or other experts.

3. Other situations develop in which there are no guidelines and/or restrictions in the contract under which the technology or deliverable item was developed. In these situations the requirements office is most knowledgeable as to continuing classification, sensitivity of sale to other parties, or compromise of certain data elements relating to technology or deliverable end items. In these situations the cognizant technical officer, with approval of his office director or deputy director, should reply directly in writing to the contractor. If the transaction proposed by the contractor does not appear to be objectionable or to otherwise give rise to reservations, the technical office should inform the contractor in writing that it is not our policy to comment

on such transactions. The contractor must be advised to seek its own independent legal counsel as the Agency's action is not to be interpreted as tacit approval by the entire Federal Government. In addition, there may be other legal matters unknown to the requirements office which would affect the contractor, such as compliance with pertinent federal and state laws and regulations. If, however, the transaction causes us to have reservations or objections, we should so inform the contractor.

4. On issues which develop under the contract (paragraph 2), the contracting officer has the basic responsibility for preparing a coordinated response to the contractor. On noncontractual matters, such as those discussed in paragraph 3 above, the requirements technical office has the basic responsibility to reply to contractor queries. In no event should legitimate contractor queries be ignored since to do so may indicate that the Agency condones the proposed action. The Office of General Counsel or the Office of Logistics should be respectively consulted on legal and contractual matters. STATINTL



John F. Blake
Acting Deputy Director of
Central Intelligence

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OFFICE OF LOGISTICS
PROCUREMENT NOTE NO. 105

27 SEP 1977

QUICK REACTION CONTRACTS (QRC)

1. The Agency has, for a number of years, utilized what are referred to as Quick Reaction Contracts (QRC). Under these contracts, terms and conditions are negotiated with a selected contractor for delivery of supplies and services in specified areas of expertise. Funds are obligated at the time of contract execution and work is performed in accordance with work orders/technical directives issued under the contract as requirements occur. The schedule of the contract authorizes the contractor to proceed with work authorized by designated technical officers so long as the estimated cost of the work does not exceed some specified amount (usually \$5,000 to \$10,000). This authorization from the technical officer is required to be ratified by a written statement of the work to be performed and a cost estimate from the contractor, usually within 10 days of the authorization to proceed. Work orders may be initiated for greater amounts than those which are authorized by the technical officer but, in such cases, must be approved by the contracting officer. In all cases there is cost/price analysis and some form of negotiation of cost/profit. The contract itself may be any legally authorized type, i.e., Firm Fixed Price, Time and Material, Cost Plus Fixed Fee, etc.

2. While the QRC has served a useful purpose for a number of years, there have been abuses associated with the contract form which recently resulted in the assembly of a task force of senior Agency personnel to study the use and necessity for such contracts. In connection with this effort an informal inspection was made by the Inspector General (IG). The IG noted generally that there is considerable variation among the various decentralized contracting elements in the handling of QRC's and specifically as follows:

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a. Contractors are usually obligated to respond with the formal proposal to the contracting officer within 10 days of the Contracting Officer's Technical Representative's (COTR) phone call or visit. Sometimes, too, the contractor neglects the 10-day rule. In some practices, moreover, the contractor is required to send the proposal to the COTR rather than to the contracting officer. On occasion, even when the proposal is sent to the contracting officer, the latter may have neither time nor expertise to review the text carefully.

b. Similarly, some contractors fail to submit invoices at the end of the month, while others are required to send them to the COTR rather than contracting officers. In certain cases, the contracting officer may see no documentation until arrival of a contractor's monthly status report.

c. General coordination and rapport between COTR's and contracting officers are sometimes hampered by distance, slow interoffice mails, and heavy turnover among contracting officers.

d. The "work order," generally perceived as a key document and prepared by the COTR for the contracting officer as a match to the contractor's formal "proposal," is not always required.

Even noting the above deviant procedures, the IG observed that the QRC is "an important management tool" and should be preserved. The concluding recommendation was that uniform definitive policy and procedures for QRC's be developed which would include necessary management accountability for the establishment of each specific requirement.

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3. Requirements established in law, in the Armed Services Procurement Regulations (ASPR) or in existing Central Intelligence Agency regulatory issuances which have general application to the procurement of supplies and nonpersonal service (such as the requirement for competition) are applicable for the execution, administration, and settlement of QRC's. Consistent with recommendations of the IG, the following procedures are established for all QRC's utilizing Fiscal Year 1978 or subsequent year funds:

a. Technical officers may discuss general requirements or specific requirements as necessary to establish individual work order statements of work. These discussions may include quantity and mix of labor hours, materials and other items of direct cost.

b. The actual authorization to the contractor to initiate performance or expend funds under a specific work order, whether oral or in writing, must be by the responsible contracting officer.

c. Written cost/price proposals, including brief statements of work, must be provided by the contractor as soon as possible after authorization to proceed and not later than 10 days after receipt of such authorization. The length and complexity of these proposals will depend on the magnitude of the task. These proposals will be retained in the original contract file after verification by the COTR that the proposal accurately reflects the work to be done. Evidence of such review and concurrence by the COTR must be a part of the contract file.

d. Copies of actual work order documents (Forms 2448, A, B), executed by the authorized contracting officer, must be distributed to the contractor, the COTR, the Audit and Certification Division in the Office of Finance, and the official contract file.

e. Work orders must be consecutively numbered in the order of issuance and must be input to the CONIF data base.

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f. Evidence of satisfactory performance by the contractor, whether by inspection reports from COTR's or signature of COTR's, on invoices consistent with procedures for other contract forms must be on file.

g. Invoice, payment, and settlement procedures will be in accordance with established procedures.

4. The requirement that only the contracting officer authorize work or expenditure of funds by Agency contractors is consistent with Federal procurement policy. The decentralization of the procurement organization and resultant proximity of technical officers and contracting officers is viewed as facilitating communications between COTR's and contracting officers in such a way that no delay will occur in the procurement process.

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James H. McDonald
Director of Logistics